IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 4865/2003
(Narendra Kumar Vs. State of Rajasthan & Anr.)

Date of Order : 03/01/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. H.S.Sidhu for the petitioner.
Mr. Rameshwar Dave, Dy. Govt. Advocate for respondents.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of order Annex.P-5 dated 27.5.2003 and a direction for grant of consequential benefits and third selection grade w.e.f. 3rd March, 2000.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was appointed as Constable with the respondent Police Department under the provisions of Rajasthan Police Subordinate Service Rules, 1989 (for short 'the Rules of 1989' hereinafter) on 3rd March, 1972. The State Government by the order Annex.1 dated 25.1.1992, with a view

to provide relief to the employees of certain categories, made a provision for grant of selection grade on completion of 9, 18 and 27 years of satisfactory service. The first selection grade shall be granted from the day following the day on which one completes service of nine years, provided that the employee has not got one promotion earlier as is available in his existing cadre. The second selection grade shall be granted from the day following the day on which one completes service of eighteen years, provided that the employee has not got two promotions earlier as might be available in his existing cadre and the first selection grade granted to him was lower than the pay scale of Rs. 2200-4000; and third selection grade shall be granted from the day following the day on which one completes service of twenty seven years, provided that the employee has not got three promotions earlier as might be available in his existing cadre and the first or the second selection grade granted to him, as the case may be, was lower than the pay scales of Rs. 2200-4000.

The petitioner contended that he has been granted first and second selection grades and has completed 27 years of service but has not got three promotions earlier as may be available in his existing cadre and after granting the first and second selection grades, his salary was lower than the pay scale

of Rs. 2200-4000.

A reply to the writ petition has been filed by the respondents stating that the petitioner was granted third seletion grade on completion of 27 years of service vide order dated 16.7.2001 Annex.P-2. It has not been disputed that the petitioner was appointed on the post of Constable on 3.3.1972 and as such he has completed 27 years of service on 2.3.1999. It has been averred that vide order dated 31.12.1995 the petitioner was punished by imposing penalty of Censure and vide order dated 24.4.1998 the petitioner was punished with stoppage of two annual grade increments without cumulative effect and therefore, the petitioner is entitled for selection grade with effect from 3.3.2002 instead of 3.3.1999.

Learned counsel for the petitioner submits that the penalty of censure imposed on the petitioner cannot come in the way for grant of selection grade to the petitioner. He has relied on a Division Bench decision of this Court in Devi Singh Vs. State of Rajasthan and Ors. 2004 (2) CDR 925 (Raj.) wherein this Court held that the grant of selection scale under order dated 25.1.1992 is akin to personal promotion scheme and a personal advancement in pay scale scheme without reference to anybody else. Therefore, it did not involve any element of selection or

comparative merit and therefore, the premise on the basis of which the learned Single Judge came to the conclusion that because the petitioner suffered a punishment of censure, he was not entitled to be considered for selection scale which is a promotion by merit, cannot be sustained.

Learned counsel for the petitioner further submits that by order Annex.P-4 dated 27.2.2002, the petitioner was granted third selection grade with effect from 3.3.2001, but vide order Annex.P-5 dated 27.5.2003, the respondents modified the selection grade granted to the petitioner vide order Annex.4 w.e.f. 3.3.2001 and made it effective from 3.3.2002 and this order has been passed without affording an opportunity of hearing to the petitioner. Learned counsel has relied on a decision of this Court in Ganpat Lal Mathur Vs. M.R.E.C. 2005 (1) Service Cases Today,(Raj.) 377 wherein this Court held that directions to withdraw the benefit of selection grade, granted to the petitioners, without providing the opportunity of hearing and the impugned orders of recovery of selection grade once granted to the petitioners is arbitrary and are against the principles of natural justice.

A Division Bench of this Court in Alam Ali Vs. State of Rajasthan & Ors. RLR 2000 (2) 721 relying on a decision of

Hon'ble Supreme Court in Sahib Ram Vs. State of Haryana and others 1995 (Supp. 1) SCC 18 wherein Apex Court restrained the recovery of the payment already made to the appellant, as it was not on account of any misrepresentation made by the appellant therein that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault, held that if a higher pay scale has erroneously been given to an employee long back and he had received it out of no fault on his part, it shall not be just and proper to recover the excess amount already paid to him.

Keeping in view the decision of Hon'ble Supreme Court in Sahib Ram Vs. State of Haryana & Ors. (supra) as also Division Bench decision of this Court in Alam Ali Vs. State of Rajasthan and Ors. (supra), in my view, the order impugned Annex.5 dated 27.5.2003 to the extent modifying the grant of selection scale to 3.3.2002 already granted to the petitioner w.e.f. 3.3.2001 vide Annex.P-4 as also directing to recover the excess amount paid in pursuance of Annex.P-4, cannot be sustained and is liable to be quashed. In view of the Division Bench decision of this Court in Devi Singh Vs. State of Rajasthan and Ors. (supra) the punishment of censure cannot come in the way of grant of selection grade to the petitioner and therefore,

the order impugned Annex.P-5 granting selection grade w.e.f. 3.3.2002 instead of 3.3.2001 on the premise that the petitioner has suffered punishment of censure vide order dated 31.12.1995 is erroneous and therefore, liable to be quashed.

In view of the aforesaid discussion, the writ petition is allowed. The order impugned Annex.P-5 dated 27.5.2003 is quashed and the order Annex.P-4 dated 27.2.2002 is restored. Stay petition also stands disposed of. No order as to costs.

(H.R.PANWAR),J.

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